IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2007

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.25649 of 2006
And
M.P.Nos.1 and 2 of 2006

Padmavathi .. Petitioner

Vs.

1.National Highways Authority
of India,No.6(Old No.11),
I Floor, 3rd Main Road,
Pon Nagar,
Trichy-620 001.

2.The Competent Authority,
(Land Acquisition),
National Highways cum District
Revenue Officer,
Tindivanam.

3.The Special Officer,
(Land Acquisition),
Fourway Lane,
National Highway 45,
Tindivanam. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in Na.Ka.A020/2003/NH 45 Tindi dated 18.2.2006 and quash the same with respect to the order of withholding the compensation amount due to petitioner and consequently direct the second respondent to pay the compensation amount due to petitioner for the lands acquired by the respondents.

For Petitioner : Mr.T.R.Rajaraman

For Respondents-1&2 : Mr.P.Wilson,
Asst. Solicitor General

For Respondent-3 : Mr.I.Paranthaman,
Government Advocate.

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ORDER

The land of a small extent of about 5 cents (2160 sq.ft.) in old Survey No.7/6 corresponding to Survey No.96/3F in Kidangal Village, Tindivanam Taluk, formed part of a larger extent of land sought to be acquired by the Central Government for forming a bye-pass road in National Highways No.45 in Tindivanam-Villupuram-Trichy Section, by a notification issued under Section 3-A(1) of the National Highways Act, 1956, published in the gazette on 14.6.2004. After holding an enquiry under Section 3-C (2), a declaration under Section 3-D(1) was published on 4.5.2005.

2. A notice under Section 3-G(3) was issued in the Newspapers on 20.7.2005 inviting claims from persons interested in the land, for determining the compensation payable. An enquiry was held on 5.8.2005 and 6.8.2005 in the Office of the Competent Authority.

3. On coming to know of the acquisition proceedings, three persons by name Subba Naidu, Dhanasekar and Elumalai filed a suit in O.S.No.304 of 2005 on the file of the District Munsif Court, Tindivanam against their Power Agent by name D.Kannan, the purchaser of the property by name K.Ganesh and the Special Tahsildar (LA), National Highways, praying for a declaration that the suit property of the total extent of about 25 cents in old Survey No.7/6, Kidangal Village, belonged to them and for a consequential relief of permanent injunction restraining the defendants from interfering with the possession of the property and also for an injunction restraining the third defendant from disbursing the compensation amount to defendants 1 and 2.

4. In view of the said suit, the Competent Authority passed an Award on 18.3.2006, determining the compensation payable in respect of the aforesaid property viz., 5 cents in old Survey No.7/6 New Survey No.96/3F, Kidangal Village, but directing the compensation amount to be kept in deposit till the suit is finally disposed of and the rights of the parties are determined by the Civil Court.

5. Challenging the said Award of the Competent Authority in so far as the direction to withhold the compensation amount is concerned, the petitioner has filed the present writ petition, contending that she purchased the said land measuring 5 cents in old Survey No.7/6 New Survey No.96/3F, from one D.Kannan (first defendant in the Suit), by virtue of the Registered Deed of Power of Attorney executed by the plaintiffs in the Suit and that her purchase was under a Power of Attorney which was not revoked till date.

6. I have heard Mr.T.R.Rajaraman, learned counsel for the petitioner, Mr.P.Wilson, learned Assistant Solicitor General for respondents 1 and 2 and Mr.I.Paranthaman, learned Government Advocate for the third respondent.

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7. The grievance of the petitioner is only in respect of that portion of the Award passed by the second respondent, by which he has directed the compensation amount to be withheld till the Civil Suit

between the parties is disposed of. The petitioner assails the said part of the Award on the ground that the plaintiffs in the Suit Subba Naidu, Dhanasekaran and Elumalai had executed two deeds of Power of Attorney bearing Document Nos.9/94 and 35/94 and that they revoked only the Power of Attorney under Document No.35/94. It is the contention of the petitioner that she purchased the property only by virtue of the Power of Attorney under Document No.9/94 which had not been revoked till date and that therefore, the Competent Authority ought not to have taken note of the pendency of the Suit, especially when the petitioner was not made a party to the Suit.

8. It is true that the petitioner purchased a small extent of 5 cents from out of a large extent of acre 1.37 in Old Survey No.7/6 from one D.Kannan, the Power Agent of Subba Naidu and others and the sale deed shows that it was executed by the Power Agent in exercise of the power conferred upon him under the Deed of Power of Attorney Document No.9/94. It is also seen from the copy of the plaint filed by Subba Naidu and others in O.S.No.304 of 2005 that they claim to have revoked both the powers by a single document dated 25.1.1996. The Deed of Revocation of Power of Attorney dated 25.1.1996, filed in the typed set of papers shows that what was revoked was only the Deed of Power of Attorney Document No.35/94. Therefore, prima facie it appears as though the Deed of Power of Attorney by virtue of which the petitioner purchased the property, was not revoked. The petitioner has also not been made a party to the Suit.

9. But all the above facts are not enough to persuade the second respondent (Competent Authority) to make payment of the compensation amount to the petitioner. The second respondent is not a Civil Court to adjudicate upon the above facts and record a finding as to whether the Power of Attorney through which the petitioner purchased the land was revoked or not and as to whether the revocation of power was valid or not. The second respondent has been made a party to the Civil Suit and a prayer has been made by the plaintiffs, seeking a permanent injunction against the second respondent restraining him from making payment of the compensation amount to the Power Agent. This action on the part of the rival claimants, in instituting a Suit and seeking a relief against the Competent Authority, is sufficient for the Competent Authority to conclude that there exists a dispute.

10. The procedure to be followed by the Competent Authority, whenever a dispute arises, is spelt out in Section 3-H(4) of the Act. It reads as follows:-

> "If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated."

11. Considering the scope of Section 3-H(4) of the Act, this Court had already disposed of a writ petition in W.P.No.18667 of 2006 on 12.1.2007, holding that a reference under Section 3-H(4) is akin to a reference under Section 30 of the Land Acquisition Act, 1894. The Supreme Court has already held in Sharda Devi vs. State of Bihar (2003 (3) SCC

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128) that a reference under Section 30 of the Land Acquisition Act, is not confined in its operation to a person interested and that a reference under Section 30 could also be made on an oral application or even suo motu without anyone having invited the attention of the Collector for making a reference (para-25 of the judgment of the Supreme Court).

12. Therefore, the prayer of the petitioner for a direction to the respondents to make payment of the Award amount to her, is not sustainable in the teeth of Section 3-H(4) of the Act, on account of the pendency of a Civil Suit. It does not really matter that the petitioner was not impleaded as a party to the said Suit. As a matter of fact, the petitioner has also not chosen to implead the other persons as parties to the present writ petition. What is important is that the Competent Authority has been made a party to the Suit, thereby making it known to him that a dispute has arisen. Therefore, the Competent Authority has become obliged to act according to the dictate contained in Section 3-H(4) of the Act.

13. As a matter of fact, the Competent Authority ought to have done this even while passing the impugned order dated 18.3.2006. Though the relevant portion of the impugned order of the Competent Authority contains a direction (in page-26 of the impugned order) that the compensation amount will be kept in deposit till the Civil Court decides the issue, it is not known whether the amount was actually kept in deposit. Mr.P.Wilson, learned Assistant Solicitor General stated that the Central Government had already deposited the entire amount payable in respect of all the lands acquired in a current account which does not carry any interest and that what is referred to in the impugned order is the same deposit. In other words, from the date of the impugned order viz., 18.3.2006, the amount is lying in an account without carrying any interest and the Competent Authority has also failed in his obligation to act in accordance with Section 3-H(4) of the Act.

14. In view of the failure of the Competent Authority to act in accordance with Section 3-H(4) of the Act, the learned counsel for the petitioner claimed that the amount should at least be directed to be deposited in a Nationalised Bank, together with interest from 18.3.2006. But Mr.P.Wilson, learned Assistant Solicitor General contended that there is no provision in the National Highways Act for the Award of interest.

15. It is true that there is no provision in the National Highways Act, 1956, which is similar to Section 34 of the Land Acquisition Act, 1894. Under Section 34 of the Land Acquisition Act, 1894, the Collector is obliged to pay interest at 9% p.a. from the date of taking possession, if the amount is not paid or deposited on or before taking possession of the land. If the payment of deposit is delayed beyond a period of one year, the interest is payable at 15% p.a. from the date of expiry of one year. But unfortunately, the National Highways Act does not contain a similar provision.

16. However, there is a provision in Section 3-G(5) of the National Highways Act, 1956, to seek arbitration if the amount awarded by the Competent Authority is not acceptable to the parties. Under Section 3-H(5), the Competent Authority becomes liable to pay interest at the rate

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of 9% per annum, if on arbitration, the compensation gets enhanced. But the interest is awardable only on the excess amount (difference between the amount awarded by Arbitrator and the amount awarded by the Competent Authority) and it is payable from the date of taking possession till the date of deposit. Section 3-H(5) and 3-H(6) read as follows:-

> "(5) Where the amount determined under Section 3-G by the Arbitrator is in excess of the amount determined by the Competent Authority, the Arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under Section 3-D till the date of the actual deposit thereof."
>
> "(6) Where the amount determined by the Arbitrator is in excess of the amount determined by the Competent Authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the Competent Authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

17. In so far as the manner in which a deposit is to be made, Section 3-H(1) as well as Section 3-H(6) speak only about the deposit to be made by the Central Government with the Competent Authority and the deposit is to be made in such a manner as laid down by the Rules. For the purpose of such deposit, the Central Government have issued rules known as "The National Highways (Manner of Depositing the amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998. Rule 2 of the said Rules reads as follows:-

> "2. The manner of depositing money with the Competent Authority.--
>
> (1) Subject to the provisions of the Act, the existing agency authorised by the Central Government in this behalf shall deposit,---
>
> (a) the amount determined under Section 3-G of the Act, and
>
> (b) where the amount determined by the Arbitrator under Section 3-G of the Act is in excess of the amount determined by the Competent Authority, the excess amount together with interest, if any, awarded by the Arbitrator, within seven days of such determination or award by the Competent Authority or by the Arbitrator, as the case may be, with the Competent Authority through demand draft.
>
> (2) The Competent Authority shall deposit the amount received under sub-rule (1) in a separate Public Deposit Account in the Public Account of India and the provisions of sub-sections(2) to (4) of Section 3-H of the Act shall apply to such deposit."

18. In the light of the above provisions, it is clear that there is a lacunae in the National Highways Act, inasmuch as there is no provision for the Award of interest if the payment due under the Award is

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delayed for an unduly long period of time. Under such circumstances, the Court is obliged to look into equity. The right to acquire the property is actually an infringement on the property rights guaranteed under Article 300-A of the Constitution. Therefore, there must be a provision fixing a time limit for disbursing the amount of compensation awarded and there must also be a provision for payment of interest if such disbursement is delayed beyond a reasonable time. The Rules extracted in paragraph-17 above also do not throw any light on the time limit within which the Competent Authority has to disburse the amount or the interest payable if the amount is not disbursed within the time limit.

19. Under the above circumstances, I am of the considered view that the parties, in whose favour an Award was passed on 18.3.2006, should not be made to suffer, especially when the Competent Authority failed to refer the matter to the Court under Section 3-H(4) of the Act. If the Competent Authority had referred the dispute under Section 3-H(4), the parties would have at least got appropriate directions for depositing the money into a Bank account and got a nominal rate of interest from 18.3.2006. Now a period of more than 11 months have passed from the date of determination of the compensation amount and the first respondent has taken a stand in paragraphs-11 and 13 of the counter-affidavit that there is actually no need for the Competent Authority to refer the matter to the Civil Court. Therefore, I am of the considered view that the Competent Authority should be directed to deposit the compensation amount together with simple interest at 6% p.a. from 18.3.2006 till the date of deposit and also refer the dispute under Section 3-H(4) of the Act.

20. Accordingly, this writ petition is disposed of with the following directions:-

(a) The Competent Authority shall, within four weeks of receipt or production of a copy of this order, deposit in any Nationalised Bank, the amount of compensation as determined by him by the Award dated 18.3.2006 in respect of the property over which the petitioner claims title, together with interest at 6% p.a. from 18.3.2006 till the date of deposit.

(b) The Competent Authority shall, within four weeks of receipt or production of a copy of this order, make a reference under Section 3-H(4) of the National Highways Act, 1956, to the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction, the land is situate.

(c) It is open to the petitioner as well as her rival claimants to get appropriate orders from time to time, from the Court to which the dispute is referred, for renewing the deposit made under Clause (a) above during the pendency of the dispute and for payment out after the dispute is adjudicated one way or the other.

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21. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Svn.

To

1.National Highways Authority
of India,No.6(Old No.11),
I Floor, 3rd Main Road,
Pon Nagar,
Trichy-620 001.

2.The Competent Authority,
(Land Acquisition),
National Highways cum District
Revenue Officer,
Tindivanam.

3.The Special Officer,
(Land Acquisition),
Fourway Lane,
National Highway 45,
Tindivanam.

+ 1 CC To Mr.P.Wilson, Advocate SR NO. 13075

+ 1 CC to the Government Pleader SR NO 13050

W.P.No.25649 of 2006

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